

The Gazette of India



EXTRAORDINARY

PART II—Section 3

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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 15th June, 1953

S.R.O. 1285.—Whereas the election of Shri M. K. Shivananjappa of Mandya Town, Mysore State, as a member of the House of the People from the Mandya constituency of that House, has been called in question by an Election Petition duly presented, under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri M. C. Linge Gowda of Maddur, District Mandya, Mysore State,

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provision, of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, MYSORE, BANGALORE

Bangalore, the 11th May, 1953

PRESENT:

1. Sri V. Kandaswami Pillai, B.A., B.L., Retired Judge, High Court of Mysore, Bangalore—*Chairman*.
2. Sri K. N. Padmanabhaiah, B.A., LL.B., Principal District and Sessions Judge, Bangalore—*Member*.
3. Sri Mir Iqbal Hussain, B.A., B.L., Advocate, Bangalore—*Member*.

ELECTION PETITION No. 121 of 1952

Sri M. C. Linge Gowda, aged about 65 years, Hindu, Residing at Maddur, Mandya District, Mysore State—*Petitioner*.

Vs.

Sri M. K. Shivananjappa, B.A., LL.B., aged about 33 years, Hindu, Residing at Mandya Town, Mysore State—*Respondent*.

Petitioner by Sri K. P. Muddappa, B.A., LL.B., Advocate, Bangalore

Respondent by Sri D. N. Narasinga Rao, Pleader, Mandya.

This is a petition filed under Section 81 of the Representation of the People Act, 1951 by the petitioner, received by Registered Post on 10th July 1952 by the Election Commission, India, praying that the election of the respondent to the House of the People from Mandya Parliamentary Constituency may be declared void and the petitioner be declared duly elected in the interest of justice and equity.

JUDGMENT

Parties were the only candidates for election to the House of the People from Mandya Parliamentary Constituency. Petitioner was nominee of K. M. P. Party and respondent Congress nominee. The strength of the electorate in this Constituency was about 3½ Lakhs. There were as many as 355 polling booths spread over the Constituency. The election was very keenly contested and the respondent was declared duly elected as having secured majority of votes.

2. Petitioner has brought this election petition under Section 81 of the Representation of the People Act, 1951, challenging the election of the respondent on various grounds

3. According to the petitioner, the then Chief Minister to the Government of Mysore, Sri K. Chengalaraya Reddy, and the then Ministers to the Government, Sri H. C. Dasappa, Sri K. T. Bhasyam and Sri T. Mariyappa, who were in power and authority during the election, toured extensively throughout the Constituency, and carried on election propaganda by means of speeches, holding out promises and threats, and thereby brought undue influence to bear on the electorate to exercise their franchise in favour of the respondent.

4. (a) It is admitted that Sri A. G. Bandi Gowda, Chairman of the Mysore Sugar Company, was also the Chairman of the Congress Propaganda Committee for Mandya District at the time of election. Petitioner makes it appear that Sri A. G. Bandi Gowda is a public servant by virtue of the Government of Mysore owning sixty per cent. of the shares in the company. His case is that he toured in the Constituency and exercised undue influence on the voters, including cane-grower voters, to vote for the respondent, the Congress Candidate, by means of speeches, by allowing the purchase of about 40,000 tons of non-oppiqe sugar canes by the Mysore Sugar Factory at about the period of election, at rates very favourable to the cane-grower, and by making several of his subordinates including some lent officers of the Government in the Factory, to canvas for him.

(b) It is further averred that Sri T. V. Rudrappa Legal Adviser of the Company, canvassed for the respondent.

(c) There is also the further allegation that several automobile vehicles, such as cars, lorries and jeeps belonging to the Company, were freely used for canvassing for the respondent and securing voters.

(d) It is averred by the petitioner that at Boothanahosur polling booth, an employee of the Mysore Sugar Company under the control of the Chairman of the Company, was detected introducing several ballot papers into the respondent's ballot boxes and handed over to the Police soon after.

5. Sri H. K. Veeranna Gowda is the Chairman of the Sugar Cane Cess Committee and Sri K. V. Shankare Gowda was the Chairman of the Rural Development Committee of Mandya District, at the time of election and he is also a member of Sugar Cane Cess Committee. Petitioner contends that they moved about the Constituency and exercised undue influence on the voters to vote for the respondent.

6. Petitioner has made a broad assertion that the respondent and his agents have got practised general personation on a very large scale at all the polling booths. Thereafter he has set out specific instances of personation of dead voters in Gejjalagere and Channapatna Polling Booths alleged to have been committed at the instance of respondent, his agents and blood-relations. Description of dead voters said to have been so personated, has been set out by him thus, with the numbers in the voters' list:

Gejjalagere Polling Booth

1. Liugamma, wife of Kolapate Gowda	(29)
2. Ammannamma, wife of Siddiah	(103)
3. Devamma, wife of Bettachari	(141)
4. Hombalamma, wife of Malliah	(476)

Channapatna Polling Booth

5. Nancharamma	(1184)
6. Kamalamma	(1185)
7. Gilan Sub, son of Ushan Sah	(884)

7. Petitioner asserts that the election has not been a fair and free one due to the said instances of general undue influence which were within the knowledge of respondent and his agents, and personation.

8. Petitioner has also set out that the respondent has not kept proper and valid accounts of his election expenses and he has exceeded the maximum limit of expenses prescribed for election to the House of the People under rules framed under the Act.

9. Petitioner therefore prays that it may be declared that the elections of the respondent is void and he be duly elected in his stead.

10. Respondent has formulated his objections seriatim. According to him, the election petition is liable to be dismissed for non-payment of court fee thereon under Article 22 Schedule II of the Court Fees Act. Clause 2 of Section 83 of the Representation of the People Act, 1951, enjoins the submission of list of corrupt and illegal practices with certain details, along with the election petition. Respondent raises a point out of the omission on the part of the petitioner in not having submitted such a list with his petition and contends that it is therefore liable to be dismissed under Clause (4) of Section 90 of the Act. According to respondent, the then Chief Minister and other Ministers did not canvass for him in their official capacity but as leaders of Congress Party under the present democratic Constitution, explaining the aims and policies of the Congress Party—they having toured in the Constituency as they have done in other Districts in the State. He emphatically denies that, in the course of their election propaganda, they ever held out any promises or threats to the electorate and thus exercised undue influence on them in the choice of the candidate. Respondent further denies that either he or his agents or his blood-relations did get voters personated at any polling booth. He denies knowledge of the death of certain voters borne on the electoral rolls of Gejjalagore and Chennapatna Town, specified in the election petition as having been personated at the polls. As regards Sri A. G. Bandi Gowda, his version is that he never used his position as Chairman of Mysore Sugar Company in carrying on election propaganda on behalf of the Congress Candidates from Mandya District, and as Chairman of Congress Propaganda Committee of the District, he carried on election propaganda for them, and he never exercised undue influence on the cane-growers in the cane-growing area of the Mysore Sugar Factory and elsewhere and its labourers and its farm labourers to vote for him and he did not make any of his subordinates to canvass for him and they did not do so. He concedes that Sri T. V. Rudrappa, being a party man, has worked for the Congress party but adds that he did so without making use of his influence as Legal Adviser of Mysore Sugar Company. Respondent does not at all admit that any of the vehicles of the Mysore Sugar Company had been used either by him or his agents for his election. As per respondent, the handing over of an employee of the Mysore Sugar Company to the Police was due to a false information given by the petitioner's people when he went to the polling booth to vote. Respondent is not positive that Sri H. K. Vecranna Gowda canvassed for him as he pleads that he might have done so in his own Constituency from which he stood as a candidate for the Assembly election, being a member of the Congress party himself. As regards Sri K. V. Shankare Gowda, his plea is that he never used his official position while canvassing and even if he had canvassed for the respondent, he had every right to do so, he being a member of the party. He puts the petitioner to strict proof of correctness of his return of election expenses and of its submission in time. He denies that his election expenses had exceeded the maximum prescribed by the rules, having asserted that he had maintained proper and valid accounts thereof.

11. In the course of reply, petitioner affirms the allegations in his petition, after pleading that particulars of corrupt and illegal practices as were available to him were set out in the petition itself, thus satisfying the requirement of the law in this respect and has raised two other fresh grounds, namely,

(i) that the respondent and his agents made free use of the National Flag to canvass votes, and

(ii) that he was disqualified from being chosen as a member to the House of the People as he was then a wholesale agent of controlled cloth.

12. In his rejoinder, the respondent has denied the use of the National Flag either by him or his agents and pleads that he was only a dealer in cloths under a license issued by the Government of Mysore and he surrendered his license one and half months prior to his nomination, after contending that these grounds raised for the first time in reply cannot be enquired into.

13. The following issues were framed in the case—

- (1) Whether the election petition is liable to be dismissed under Clause (1) of Section 90 of the Representation of the People Act, 1951, for non-compliance with the provisions of Sub-Section 2 of Section 83 of the Act?
- (2) Whether the election petition is also liable to be dismissed for non-payment of court fee thereon?
- (3) Whether the petitioner has filed his return of election expenses in time; if so, whether the return is correct?
- (4) Whether the respondent has not maintained and rendered proper and valid accounts of his election expenses and whether the aggregate amount of such expenses exceeded the maximum limit prescribed by Rules framed under the Representation of the People Act, 1951, for election to the House of the people? If so, whether the respondent is disqualified from being a member of the House of the People?
- (5) Whether the then Chief Minister and Ministers for Finance, Law and Home to the Government of Mysore, toured extensively in Mandya Parliamentary Constituency just before the general elections and made speeches thereon and thereby undue influence was brought to bear on the electorate to vote for the respondent, the Congress nominee, by holding out promises and threats?

or

Whether they toured then in Mandya District as in other parts of the State and made speeches as Leaders of the Congress party, explaining only the aims and policies of the party?

- (6) Whether the respondent and his agents had false personation practised on a very large scale at the election in 355 polling booths?
- (7) Whether the voters referred to in paragraph (6) of the Election Petition are dead and they were personated at the election, at the instance of the respondent, his agents and relations?
- (8) (a) Whether there was undue influence of the part of Sri A. G. Bandi Gowda, the Chairman of Mysore Sugar Company on the cane-growers and other voters in the cane-growing area, to vote for the respondent, the Congress nominee, by means of speeches and meetings he held, by allowing the purchase of non-contracted sugar canes of about 40,000 tons from them (cane-growers) by the Company immediately before and after the election on terms very favourable to them and through his subordinates including farm and factory labourers, and he thus materially affected the result of the election in the said entire area?
- (b) Whether the several vehicles belonging to the company, were allowed to be used for the election campaign in favour of the respondent?

or

Whether Sri A. G. Bandi Gowda carried on election propaganda for the Congress party and its nominee as Chairman of the Congress Party Publicity Committee, Mandya District?

- (9) Whether Sri T. V. Rudrappa, Legal Adviser of the Mysore Sugar Company, Sri H. K. Veeranna Gowda, Chairman of Sugar Cane Cess Fund Committee and Sri K. V. Shankare Gowda, Chairman of Mandya District Development Committee and member of the Sugar Cane Cess Committee, exercised any undue influence on the voters to vote in favour of the respondent?

or

Whether they might have canvassed for the respondent as members of the Congress party—the latter two during their campaign for their election to the Legislative Assembly?

- (10) Whether an employee of the Mysore Sugar Factory under the control of the Chairman of the Mysore Sugar Company was found introducing several ballot papers into the respondent's ballot boxes in Booth-anahosur village polling booth and if so, whether it was with the connivance of the candidate and his agents?

(11) Whether the respondent was a wholesale agent of controlled cloth at the time of his nomination?

Whether the plea raised only in petitioner's reply is tenable?

or

Whether he was only a licensed dealer in controlled cloth and surrendered his license about 1½ months before his nomination?

(12) Whether the respondent used National Flag on vehicles used in the course of his election campaign?

Whether this plea raised only in petitioner's reply is tenable?

(13) To what reliefs, if any, are parties entitled?

14 In the election petition, a vehement attack has been made against the respondent and his agents that they were responsible for personation on a big scale throughout the Constituency. Petitioner has not been able to bring home to them even a single instance of personation. The corrupt practice of personation is a major one and has been defined at Clause (3) of Section 123 of the Representation of the People Act, 1951, thus:—

"The procuring or abetting or attempting to procure by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, the application by a person for a ballot paper in the name of any other person, whether living or dead, or in a fictitious name, or by a person for a ballot paper in his own name when, by reason of the fact that he has already voted in the same or some other constituency, he is not entitled to vote."

The offence of personation has been defined in Section 171(D) of the Indian Penal Code on the same lines as in this Clause. To constitute the corrupt practice of personation in relation to a voter who is alive or dead, the following ingredients are necessary:—

1. That there must be an application by a person for a ballot paper in the name of any voter, whether alive or dead.
2. That the procuring or abetting or attempting to procure the application must be by the candidate or his agent or with the connivance of the candidate or his agent.

15. In England, it has been held that, before corrupt practice can be held to have been committed, a corrupt motive must be established. This general rule has been applied to impersonation by Denman J in *Stepney Case* (1886) 4 Q' M and H 34 thus. —

"It is thoroughly understood election law that, unless there be corruption, and a bad mind and intention in personation, it is not an offence. If it is done under an honest belief that the man is properly there for the purpose of voting, it is held in these cases and in other cases analogous that no offence has been committed."

In cases relating to former elections in India, the learned Election Commissioners have found in several cases that *mens rea* is an essential element of impersonation. In one of such cases, reported in III Jagat Narain Indian Election Petitions, Page 59—*Charl Behari Kapoor, Vs. Shyam Sunder Lal*, the view taken is that some such word as 'voluntarily' has to be read in Section 171-D of the Indian Penal Code as the Courts in England have done in the case of the provision of the English Ballot Act (Section 24) defining personation as both the sections are similarly worded. Only in one case (*Maulvi Yaqinuddin Ahmead Vs. Maulvi Kadir Bux* (Jagat Narain Indian Election Petitions, Volume II page 75) the contrary view has been expressed with reference to the wording of Section 171(D) of the Indian Penal Code which is silent as to the intention or knowledge of the offender. With due respect, we agree with the line of reasoning in the other cases—based on the well-known principle that a practice, in order to be styled as corrupt, must be accompanied by a corrupt mind.

16. Now turning to the evidence led by the petitioner on the point of personation of some dead voters as alleged by him, the following facts may be taken to have been proved. P.W. 18 Bettachari is of Gejjalagere. The name of his senior wife is Devamma and she died about two years ago and he has taken a second wife, Chikkamma in about Sivaratri of 1951 (Vide his evidence) P.W. 26 Doliyah is also of Gejjalagere. The name of his senior wife is Hombalamma, and she died about two years prior to his examination on 18th December 1952, that is, in about December 1950. He has married a second wife by name Hombamma (Vide his evidence) P.W. 20 Sri Shivalingiah is the Chairman of the Village Panchayet of

Gejjalagere. After referring to these facts, he speaks to the death of Ammannamma as having occurred in about December 1950 and her husband having taken a second wife by name, Gowramma, his elder sister's daughter. Petitioner (P.W. 38) has produced Exhibit MM, copy of extract from the Register of Deaths, issued by the Deputy-Registrar of Births and Deaths, Bangalore on 29th December 1952 showing that one Hombalamma, daughter of Kenchiah, died at the age of 28 years on 1st May 1950 at Gejjalagere. Petitioner has also produced Exhibit WW, copy of extract from the Registrar of Deaths from the Deputy Registrar of Births and Deaths, showing that one Ammannamma whose father's name was not known died at the age of 25 years at Gejjalagere on 15th January 1949. Sri K. P. Muddappa argues that Hombalamma referred to in Exhibit MM is the senior wife of P.W. 26 Dolliah and Ammannamma referred to in Exhibit WW, is the wife of Siddiah and that they and Devamma have been personated by their co-wives, Hombamma, Gowramma and Chikkamma respectively. There is no doubt that P.Ws. 18 and 26 were voters at Gejjalagere polling booth. Exhibit K is a copy of printed electoral roll produced by the petitioner and entry, Exhibit K (2) has been marked therein through P.W. 18 as relating to his senior wife, Devamma. Through P.W. 26, the entry purporting to relate to his senior wife has not been marked at all in Exhibit K. None of the petitioner's witnesses had referred to any entry relating to Ammannamma in Exhibit K. Exhibit K itself was permitted to be admitted subject to the production of the original. Petitioner had the copy of the electoral roll used by the Polling Officer at that booth, summoned and produced through P.W. 41 Sri T. Shamanna, Clerk, Deputy Commissioner's Office, Mandya. It is Exhibit QQ(1) Petitioner must have got the entries purporting to relate to the aforesaid persons in Exhibit QQ(1) exhibited through the Polling Officer of Gejjalagere. He has not chosen to summon and examine him. If he had examined him in relation to these relevant entries in Exhibit QQ(1) then we would have been in a position to know whether he had issued ballot papers in those instances. In Exhibit MM, Hombalamma has been described as the daughter of Kenchiah. P.W. 26 has not been questioned in examination-in-chief about the name of his senior wife's father. Hence we are not in a position to say that Exhibit MM pertains to the senior wife of the witness. Husband's name of Ammannamma has not been given in Exhibit WW. Hence it cannot be said that it relates to Ammannamma, wife of Siddiah, as sought to be made out by the petitioner.

17. The evidence of P.W. 26 is to the effect that Khande Gowda, Mariswami Gowda and Anniah who were canvassing for the respondent asked him to go and bring his second wife to the polling booth when he told them on enquiry that his wife, Hombalamma, was dead and he brought his second wife from his house and gave out to them that her name was Hombamma, and Khande Gowda and others asked her to go and vote and she voted. Petitioner has not proved that Hombalamma was borne as a voter on the electoral roll at all. He has not further proved that Hombamma was not a voter on the roll. Hence from the evidence of P.W. 26, no inference could be drawn that Hombamma personated for Hombalamma, even assuming that Hombamma went and voted as represented by P.W. 26. According to P.W. 18, he sent his wife to vote at the polling booth after he returned home after voting and she returned and informed him that she did so, and it was not at the instance of any one that he sent her there. Petitioner has not proved that she was not a voter on the roll. P.W. 18 makes it clear that none of the alleged canvassers of the respondent asked him to send her to the booth. There is no proof also with reference to Exhibit QQ(1) that Ammannamma had been personated. P.W. 19 Chikka Siddiah is also a resident of Gejjalagere. He was at the polling booth on behalf of the petitioner on the date of election and he makes it appear that G. P. Puttaswamiah and Annaji got issued identification slips to three women voters who posed themselves as Devamma, Hombamma and Ammannamma who were dead. According to him, he questioned the Shanbogue as to why he issued the identification slips to these personators of dead voters and he pleaded helplessness in the matter as he was prevailed upon to do so by Puttaswamiah and Annaji and thereafter he orally complained about the impersonation to the Polling Officer but he did not pay heed to it. If really the identification slips had been issued to personators as alleged by him, he would have certainly put the matter in writing and filed it before the Polling Officer. P.W. 20's house is no doubt near the polling booth. His version is that, attracted by the loud protest made by the previous witness, he repaired to the spot and was apprised that Puttaswamiah was issuing identification slips to personators of dead voters and hence he told him that it was not proper on his part to issue such slips to personators and impressed on the Shanbogue that he himself should have issued them instead of allowing it to be done by others. Both the witnesses also deposed that Sri T. Mariyappa (R.W. 23) Sri Channiah and the respondent came in a car and stopped near the spot and while P.W. 20 swore that Sri Channiah even asked the people there to move amicably, P.W. 19 goes to the length of saying that he told the people that they might go and vote as it would not matter much if three or

four voters had been impersonated when the strength of the voters came up to several lakhs. Thus there is a material discrepancy as between their evidence. Not only P.W. 19 and P.W. 20 are related, they are related also to the petitioner as petitioner's younger sister is married to the son of P.W. 20's grand-uncle. Hence they are interested witnesses.

18. It was open to the petitioner to examine the alleged personators and place their evidence on record but he has not done so. This important link is missing in the chain of evidence on personation. Petitioner has failed to examine the Shanbogue of Gejjalagere who was issuing identification slips to voters at Gejjalagere polling booth. He is Sri Lakshmi Narasimhaiah who is alive.

19. R.W. 11 Chennaveere Gowda and R.W. 13 Thamme Gowda are also residents of Gejjalagere. They deny that there was any *galata* at the polling booth when they went there to vote at 4 p.m. or between 3-30 and 3-45 p.m. respectively. R.W. 11 further denies having seen (R.W. 23) Sri T. Mariyappa and Sri Channiah at Gejjalagere on the date of election. As to the respondent (R.W. 22) R.W. 11 denies that he ever came to Gejjalagere for canvassing or on the date of election and R.W. 22 also denies having accompanied R.W. 23 and Sri Channiah to Gejjalagere on the date of election. According to R.W. 23, he and Sri Channiah stopped on the road side at Gejjalagere on the date of election at about 9-15 a.m. and enquired of the people they met there about the election and they informed them that it was going on smoothly and then they left the village for other villages. There is nothing on record to discredit the testimony of R.W. 11 and R.W. 13 and R.W. 23's evidence is entitled to much weight as he has impressed us with having given precise account of his election work.

20. A suggestion is made for the petitioner by his counsel that respondent's relations canvassed for him at Gejjalagere to his knowledge and Puttaswamiiah to whom reference was made by P.W. 19 as one of those who got identification slips issued to personators of dead voters is also his relation as stated by him. R.W. 22 has denied that he has relations at Gejjalagere. P.W. 19 does not say how Puttaswamiiah is related to him. Apart from that, it is immaterial whether he is related to him or not as alleged personations have not been proved. If these had been proved, then only it would have remained to be seen whether it was at the connivance of the respondent through any of his blood-relations, said to have worked for him at the election.

21. Petitioner's Counsel Sri K. P. Muddappa, also argues that, through P.W. 21 Sri Rangaswami Upadriah, petitioner has succeeded in proving that his mother and sister-in-law, Nancharamma and Kamalamma respectively who were dead had been personated by others at Channapatna polling booth. Here also Sri K. P. Muddappa produces a printed copy of electoral roll for Channapatna Town and it was marked as Exhibit L, subject to the production of the original as in the case of Exhibit K. Exhibits L(2) and L(3) entries have been referred to by the witness as relating to these dead persons respectively. Petitioner had the electoral roll of Channapatna Town made use of by the Polling Officer, Exhibit RR(1) produced by P.W. 41 but he never chose to have the corresponding entries of these voters exhibited in it. The witness (P.W. 21) has deposed that Sri V. Venkatappa who stood for election to the Legislative Assembly from Channapatna Constituency, Sri L. C. Srinivasiah and Sri R. Srinivasiah came to his house and asked him whether his mother and sister-in-law were alive and he told them that they were dead and Sri R. Srinivasiah went away with the others, saying that they would make others personate for these dead voters. If only entries relating to them in Exhibit RR(1) had been exhibited through the Polling Officer, then it could have been made out whether ballot papers were issued in those instances. When it could not be made out whether ballot papers had been issued in their names or not, it is impossible to say that they were personated. The Official who issued identification slips should also have been examined in this connection. Further the petitioner has not proved that Sri R. Srinivasiah was working for the respondent as his agent at the election. Hence here also there is no proof of personation of dead voters. P.W. 34 Sri T. Venkatiah refers to alleged instances of impersonation of two women voters at Bevr Mandya polling booth and adds that he brought it to the notice of the Polling Officer and he took the tender votes of these alleged personators. Here again there is an important lacuna in the evidence as the Polling Officer and the Official who issued identification slips and the alleged personator had not been summoned and examined, by the petitioners on the point and hence the testimony of this witness cannot be acted upon.

21-A. A great doubt has been expressed as to whether general personation could exist, in a case decided in England. (Belfast 1886; 4 O' M&H 108). The learned Judge, while remarking that there could be a case of general bribery or general

undue influence, feels considerable doubt as to whether there could be general personation as is evident from his observation which is reproduced hereunder:—

".....but I cannot conceive such a thing in the case of personation, because if a dozen people successfully personated a dozen people, the next dozen that came up might have nothing to do with it at all. It is not a complaint that is either contagious or infectious, except so far as the person gets the complaint, and when he gets the complaint, the marks and tokens of it are visible upon him by his doing and committing the direct offence"

22. After the arguments in the case were closed, petitioner filed Interim Application No. VII under Section 151 of the Code of Civil Procedure, praying that the ballot boxes relating to Gejjalagere and Channapatna polling booths may be sent for and opened to find out whether the personators of some dead voters have voted for the respondent or not at these booths. The counsel for the respondent has opposed this application. It is very much belated. Hence it is rejected.

23. For the foregoing reasons, the petitioner has not proved any of the ingredients of even a single case of alleged personation including *mens rea* and our findings on issues 6 and 7 are in the negative

24. Sri K. P. Muddappa contends that Sri A. G. Bandi Gowda, Chairman of the Mysore Sugar Company, is a Government servant as the Government of Mysore owns sixty per cent of the shares in this Company. It is argued by Sri D. N. Narasinga Rao that it is only a joint stock concern, not managed by the Government and Sri A. G. Bandi Gowda is a non-official Chairman. The company has been incorporated under the Mysore Companies Act as a joint stock concern and Exhibit CC is a copy of Memorandum and Articles of Association of the Company. The Government of Mysore owns more than fifty per cent of the shares in this concern, but the management of its business vests with the Chairman and Board of Directors. Out of seven Directors, four of them including Sri A. G. Bandi Gowda, R.W. 21, have been nominated by the Government and at the meeting of the Board of Directors, he was elected by them as Chairman and Managing Director of the concern. Exhibit Q is copy of proceedings of the Government, approving the election of R.W. 21 as such by the Board. The original of Exhibit Q is dated 13th July 1949. The Board had also resolved that R.W. 21 should not be treated as a Government servant and that the political activities on his part, if any, are not banned. This resolution also has been approved by the Government (Vide the original of Exhibit Q). It was on the suggestion of R.W. 21 to the Board that no restraint might be placed on his political activities as deposed by him, that this resolution was passed. Simply because the Government has the right under the Articles of Association of the Company to nominate some Directors on account of large number of shares owned by it, it cannot be treated as a Government concern. Our attention was invited to remarks made by the President of the Mysore Legislative Council as set out in Exhibit TT, Official report of the Mysore Legislative Council Debate, issued under date 18th January 1949, about the Mysore Sugar Factory. It is to the effect that the Government is 'vitaly interested' in the Factory, owning as it does sixty per cent of shares in it. As the Government is the major shareholder in this Company, it must be deeply interested in its successful working. This is the construction that can be reasonably put on the words 'vitaly interested.' This cannot be construed to import that the Factory is owned by Government as suggested by Sri K. P. Muddappa. R.W. 21's pay is also met out of the Company's funds, not out of the general revenues of the state (Vide evidence of R.W. 23, Sri T. Mariyappa). Hence he is a non-official Chairman of the Company, a joint stock concern

25. Petitioner, P.W. 38, has addressed two letters, one to the President of India and another to the Chief Minister to the Government of Mysore under date 30th November 1951, complaining that Sri A. C. Bandi Gowda was carrying on election propaganda on behalf of the respondent and eight Congress candidates for election to the Assembly, exercising undue influence on the electorate in the cane-growing area and other places. Exhibit HH is the letter he addressed to the Chief Minister. Exhibit JJ, dated 17th/19th December 1951, is the reply to Exhibit HH, he received from the Secretary to the Government of Mysore, Law Department, that, as Sri A. C. Bandi Gowda (R.W. 21) is a Non-official Chairman of the Mysore Sugar Company, he can take part in election propaganda. P.W. 38 received a reply to his other letter from the Secretary, Election Commission, India, Exhibit KK, dated 21st January 1952, that the matter is engaging the attention of the Commission. Exhibit JJ, is in conformity with the original of Exhibit Q, treating R.W. 21 as non-official Chairman and Managing Director of the Mysore Sugar Company.

26. Most of the witnesses for the petitioner and the petitioner have stressed that, in the course of election speeches at different places, R.W. 21 has made the main assurance to the public that, if they voted for the Congress Candidates including the respondent, he would see that the Mysore Sugar Factory purchased non-*oppige* canes from them at the rate of Rs. 47-10-0 per ton. P.W. 2 Bore Gowda P.W. 8 Sidde Gowda. P.W. 11 Patel Linge Gowda, P.W. 13 Thippare Gowda, P.W. 24 Kempe Gowda, P.W. 29 Sri H. B. Chamiah and P.W. 36 Veerappa have all mentioned that R.W. 21 promised to see that the Factory would purchase non-*oppige* canes from the public at Rs. 47-10-0 per ton, if they supported the congress nominee, the respondent, at the election at Holalu, Kothathi, Hebbaralu, Pandavapura, Varagala, Pandavapura and Ullagala respectively when he held election meetings there. Some other witnesses for the petitioner have given out that he had promised to get them the following rates for sugar canes supplied by them to the Factory and compensation for the cane crop that had dried up and this was also at election meetings at different places. The following are the details called out from the evidence of the other witnesses for the petitioner as to the rates for canes and compensation for withered sugar cane crop alleged to have been promised by him, at meetings at certain places:—

- (i) Rs. 47-10-0 per ton of canes as per PWs 3, 5, 22, 25 and 32 at Holalu, Guttalu, Sankathanur, Sogala, and Agasanapura respectively.
- (ii) Rs. 47-8-0, Rs. 47, or so, Rs. 47-10-0, Rs. 47, odd and Rs. 40, per ton—that is, of canes at Dudda and Kodihalli (*Vide* the respective evidence of P.W. 1 Chikka Narase Gowda and P.W. 15 K. N S Kousik) of *oppige* canes at Holalu (spoken to by P.W. 2 Bora Gowda) of non-*oppige* canes at Kanakapura (*Vide* the evidence of P.W. 18 Sri M. Linge Gowda) and of canes in villages in Channapatna Taluk referred to by P.W. 23 Anku Gowda respectively.
- (iii) PWs. 1 and 5 also deposed that he also promised to get them compensation for withered cane crop, and bonus and such compensation respectively.

27. At about the time of election, some of the witnesses for the petitioner did supply non-*oppige* canes to the Mysore Sugar Factory and got the price for it at Rs. 47-10-0 per ton. P.W. 13 has supplied non-*oppige* canes to the Factory under permit issued to him, Exhibit F, as per Exhibit G, duplicate bill passed on 29th March, 1952. P.W. 24, P.W. 29 and P.W. 32 obtained permits, Exhibits M, T, and EE respectively to supply non-*oppige* canes to the Factory during the period of election. The duplicate bills issued to them for the supplies made are Exhibits N and N(1), U, U(1), U(2) and EE(1) respectively and all these bills show that they were paid at the rate of Rs. 47-10-0 per ton of canes. P.W. 29's grievance is that, after he supplied some lorry loads of non-*oppige* sugar canes to the Factory, R.W. 21 as Chairman of the Mysore Sugar Factory, stopped further supplies, with the result that he sustained damages, some of the cut cane crop on his fields having also dried up. Exhibit Z, a memo, is dated 2nd February 1952 and is addressed to the witness by the Cane Superintendent, enquiring as to how many tons of canes he had supplied since 20th January 1952. Hence from Exhibit Z it is evident that he was asked not to supply canes to the Factory from 20th January 1952 and he got a notice issued by his Advocate to the General Manager of the Mysore Sugar Company on 27th February 1952, claiming damages on that account. Exhibit W(1) is the notice. Exhibit Y is the reply to Exhibit W(1) got issued through Advocate Sri T. V. Rudrappa. This witness makes it appear that the Chairman of the Mysore Sugar Company, R.W. 21 had the supply of non-*oppige* canes by him to the Factory stopped, having listened to some one that he was working against the respondent at the election. We have carefully gone through Exhibit W(1) and if that were a fact, he would have at least mentioned in Exhibit W(1) that R.W. 21 had the notice stopping further supply, issued by the Cane Superintendent. He is an interested witness, being a member of the K. M. P. Party as the petitioner. But the practice of purchasing non-*oppige* canes is in existence in the Factory since its inception whenever the supply of *oppige* canes used to fall short for crushing. The General Manager of the Company Sri Dase Gowda, P.W. 39, has deposed that the Factory goes in for non-*oppige* canes for crushing to reach the maximum production. R.W. 21 himself has stated in clear and unequivocal terms that, ever since the inception of the Factory non-*oppige* canes used to be purchased both from the cane-growing area of the Factory as well as outside it if the supply of *oppige* canes used to fall short to step up the maximum production. P.W. 39 also has referred to the practice as long-standing. When the practice is in vogue since several years, all the cane-growers, whether *oppigedars* or non-*oppigedars*, would have come to know of it. Up to 1950, it is

on the recommendation of Sugar Fixation Committee appointed by the Government of Mysore, the Government of Mysore used to fix the rate at which sugar canes might be purchased but, since the passing of Ghur and Sugar Control Order by the Central Government in October 1950, the Central Government itself is fixing the rate for sugar canes subsequent to 1950, without any distinction between *oppige* and non-*oppige* canes in this behalf (Vide evidence of R.W. 21). No cane-grower can plead ignorance that the Central Government is thus fixing the rate for canes supplied to the Factory. It is Rs. 47-10-0 per ton of canes for the crushing seasons of 50-51 and 51-52 (Vide the evidence of P.W. 39). When the rate was Rs. 47-10-0 per ton both of *oppige* and non-*oppige* canes for the crushing season of 50-51, all the cane-growers might have expected that it might be fixed by the Central Government at the same rate for 51-52 also. Original of Exhibit B sets the matter at rest. The original of Exhibit B issued by the Congress Propaganda Committee for Mandya District, signed by R.W. 21 and others, is a notice addressed to the ryots who are cane-growers in lands under Visweswarayya Canal. It has been meant to remove from their minds false impression created on them by the propaganda of certain persons that the sugar cess is paid out of the price of the canes due to the cane-grower and not out of the total earnings of the Mysore Sugar Company as is being done and that the Government has proposed to enhance after the election the *kandayam* due on lands on which sugar canes, paddy and dry crops are raised. Apart from all these, there is mention in it that the Central Government has fixed the price of canes at Rs. 1-12-0 per maund and it would work out at Rs. 47-10-0 per ton. This notice has been produced by P.W. 7 (Linga Gowda alias Pape Gowda) and considering the purpose for which it was issued as detailed supra, it might have been widely circulated by the Congress Propaganda Committee among the cane-growers and they might have come to know on account of such circulation that the Central Government had already announced the purchase rate amounting to Rs. 47-10-0 per ton of canes. Hence it cannot at all be true that R.W. 21, tried to influence the electorate by holding out a promise that he would see that the Factory purchased non-*oppige* and *oppige* canes from them at Rs. 47-10-0 per ton.

28. Some witnesses for the petitioner have also spoken to the alleged promise of R.W. 21 to the people whom he addressed in certain places that, if they voted for the Congress nominee, the respondent, he would get them certain amenities, such as, wells, roads, schools, etc., for their villages. The version of P.W. 9 Chowde Gowda is that, at Hebbaralu, R.W. 21 made a speech that the Government would come to their help by putting up an anicut at Bekkaralu and getting the water diverted to lands in its vicinity for irrigation and a Middle School would also be provided for Hebbaralu and a road constructed to connect Habbaralu and other villages, with Kunigal-Maddur Road and the tank of Hebbaralu also repaired. According to P.W. 10, Desi Gowda, at Maraliga also, he is said to have mentioned that the Government would help them by construction of roads and opening of schools in their village and other villages. P.W. 11 Patel Linga Gowda corroborates P.W. 9 on the point of getting road constructed in Hebbaralu connecting it with Kunigal-Maddur Road. In Arakere, R.W. 21 is deemed to have said that it was their Government, and High School and roads would have to be opened there with its help (Vide evidence of P.W. 12 A. M. Sidde Gowda alias Kariyappa). He is said to have addressed a gathering in Koodalkuppe that he would bestow on them some benefit, namely, repairing of roads in the village in his capacity as Chairman of Mysore Sugar Factory (Vide the evidence of P.W. 14 Chowde Gowda). At Kodihalli, he is purported to have gone a little farther and addressed the gathering that he would put in a word to the President of the District Board to have the roads in their village repaired as he was in power and the Ministry was Congress Ministry (Vide the evidence of P.W. 15 K.N.S. Kousik). P.W. 24 Kempe Gowda, also makes it appear that, in his village, Varagala, R.W. 21 told the villagers that he would secure for them roads and wells, the Ministry being Congress Ministry. Even at Sogala, he is alleged to have promised to have a Middle School opened and road constructed in that village by the Government as they were Congress people and the Ministry was Congress Ministry (Vide the evidence of P.W. 25 K. Thammanne Gowda). At Chikkarasanakere, not only R.W. 21 but two other members of the Congress party addressed a gathering. At that place also, he is deemed to have promised the people to get them roads and water from Pick-Up Nala to improve their lands in the cane growing area of the Factory but also to put up Weigh Bridge for every third mile in their villages (Vide the evidence of P.W. 33 Karc Gowda). Exhibit FF is an address presented to R.W. 21 as Chairman of the Mysore Sugar Company at Chikkarasanakere by ryots of those parts on his return from foreign tour. The main request made therein is to put up a Weigh Bridge in Byredevara Thope. R.W. 21 is definite that he did not say anything about the election at that meeting. In Bevur Mandya and Nagawada, R.W. 21 along with other members of the Congress Party addressed meetings and he is alleged to have appealed to the

people to vote for the respondent as Kadaramangala tank on the border of Chennapatna would be renovated (Vide the evidence of P.W. 34 T. Venkataiah). It is not at all probable that R.W. 21 would have made promises to the people which were not within his power as Chairman of the Mysore Sugar Company to fulfil. R. W. 21 could not have even thought of saying to the people that he would have roads, wells and schools opened in the villages wielding his influence as a member of the Congress party with the Congress Ministry. The aforesaid statements are all untrue and got up for the occasion.

29. Through P.W. 30, Sri J. S. Narasimha Somayaji, Editor of Janavani, some columns in Exhibit AA, the issue of Janavani, dated 3rd November 1951, were exhibited as Exhibits AA(1) and AA(2). He has received these reports from his Press Correspondent at Mandya; so also the report published as per Exhibit BB(1) in Exhibit BB, issue of Janavani, dated 23rd November 1951. Exhibit AA(1) contains purport of the speeches made by Sri S. Channiah, Sri A. C. Bandi Gowda, R.W. 21 Chairman of the Mandya District Congress, Propaganda Committee and Sri H. K. Veeranna Gowda at a meeting held by the Mandya District Congress Working Committee at Mandya. Exhibit AA(2) gives the purport of the proceedings of the Mandya District Congress Committee assembled at Mandya, organising the Mandya District Congress Propaganda Committee. The speeches in Exhibit AA(1) were not addressed to the electorate but were made at the meeting of the Congress Working Committee of the Mandya District. Exhibit BB(1) purports to be a report of the speeches made by Sri A. G. Bandi Gowda and Sri Channiah at Sivahalli. R.W. 21 does not admit the contents of Exhibit BB(1) so far as it relates to him. R.W. 21 had not started his propaganda work for Congress Candidates by that time (Vide his evidence). It was an address that was given to R.W. 21 at Shivalli on his return from foreign countries. He admits having stated that he has been appointed as Chairman of the Propaganda Committee and he has to visit some Taluks in connection with propaganda. Thus he does not admit that he would render all possible help from the Mysore Sugar Company to encourage sugar cane cultivation as requested by the people as mentioned therein. Even in Exhibit BB(1) he has said something general about the candidates who have been chosen by the Congress Organisation, including the respondent, that is, they are able to sacrifice their interests in the cause of the country. The petitioner should have summoned the Press Correspondent, Sri Javarappa Gowda of Mandya himself and examined him with reference to these exhibits.

30. R.W. 21 himself has made his position clear as to how he pursued his election propaganda for the Congress Candidates both to the House of the People and Assembly as Chairman of the Congress Propaganda Committee for Mandya District. He never mentioned a word to people about Mysore Sugar Factory. He toured for the purpose in a van provided for him by the Committee, and not in the Factory car as averred by some witnesses for the petitioner. He appealed to the people to vote for the Congress Candidates on explaining to them the policies of the Congress Organisation and the work turned out by it in the interest of the public. Thus he has addressed public meetings only with the object of expounding the policies of the Congress Organisation and the achievements of the Organisation in the cause of the public. He was at perfect liberty as Chairman of the Congress Propaganda Committee to exhort the electorate to exercise their choice of the candidates adopted by the said Organisation.

31. Several witnesses for the respondent have come forward and mentioned that Sri A. G. Bandi Gowda (R.W. 21), asked the people in their villages to vote for the Congress Candidates, without promising them any benefit from the Mysore Sugar Factory, such as purchase of non-oppiye canes from them (Vide the evidence of R.W. 1 Honne Gowda, Holalu, R.W. 3 Kemplah Kothathi, R.W. 4 Kade Gowda, Guttalu, R.W. 5 Chowde Gowda, Guttalu, R.W. 6 Narase Gowda, Dudda, R.W. 7 Chikmote Gowda, Dudda, R.W. 8 Rame Gowda, Sivahalli, R.W. 9 Lakshmana Rao Pandavapura, R.W. 10 Ere Gowda, Hiremarale in connection with the meeting at Pandavapura, R.W. 11 Channaveere Gowda, Gejjalagere, R.W. 13 Thamme Gowda, Gejjalagere, R.W. 16 P. Hombiah, Arakere and R.W. 19 Sri K. V. Shankare Gowda) R.W. 4 has also stated that he did not promise to help them in any other way also if they voted for the Congress Candidate. R.W. 9 gives the main feature of his speech at Pandavapura that he asked them to vote for the Congress Candidates as the party had worked hard for the country and the organisation itself was a good one. R.W. 13 refers to a similar aspect in his speech at Gejjalagere. As per R.W. 16, he referred to the Congress Organisation as a powerful one and solicited the support of the people for it as in the past. Some of these witnesses are paying heavy assessment and of good social

standing and there is absolutely no reason to discredit the evidence of any of them

32. R.W. 2 H. L. Linge Gowda of Holalu deposes thus in examination-in-chief:—

"Sri A. G. Bandi Gowda and Sri Bomme Gowda told us that Sri Shankare Gowda and respondent were educated and we might vote for them. They also said that we might vote for these Congress Candidates and nothing more."

In Cross-examination, he has made the following statement *inter alia*.

"R.W. 1 was not present then. They also asked some others to get the votes of others. Sri A. G. Bandi Gowda asked the Patel of my village to do so. He asked all of us to give votes for the Congress Candidate."

Sri K. P. Muddappa argues relying on this passage in the course of cross-examination of this witness that Sri A. G. Bandi Gowda who happens to be a general agent of the candidate, the respondent, has attempted to secure the assistance of a Government servant, the Patel of the village with a view to secure votes of others for him and it is thus a major corrupt practice coming under Clause (8) of Section 123 of the Representation of the People Act, 1951. Sri D. N. Narasinga Rao argues contra. R.W. 21 was in the witness-box for some hours and he was not confronted with the said statement of R.W. 2 about the alleged attempt of R.W. 21 to secure the assistance of the Patel of the village for procuring votes. R.W. 1 is also of Holalu and both R.W. 1 and R.W. 2 were examined on the same day yet R.W. 2 denies that R.W. 1 was present when R.W. 21 and others came to the village. He must have deliberately denied R.W. 1's presence then as R.W. 1 has supported the case for the respondent *in toto*. The aforesaid statement of R.W. 2 in cross-examination is an after-thought as, in examination-in-chief, he has used the words 'nothing more' to show pointedly that R.W. 21 and others asked those present to vote for the Congress Candidates. No allegation is made in the election petition itself that R.W. 21 ever asked any Patel to canvass votes of others for the respondent and hence what was stated by R.W. 2 in the course of cross-examination as set out supra, cannot at all be taken into consideration. In a case reported in Doabia's Indian Election Cases Volume I, Page 276, Nimar Mohanmadan Rural Constituency, Syed Hifazat Ali Vs. Mohammad Asghar, it was sought to be proved by the petitioner by the cross-examination of a witness for the respondent the particulars of a feeding at one of the polling stations on the part of the respondent. The learned Election Commissioners declined to take into consideration the evidence of that witness, Hajee Ibrahim on the point in the course of his cross-examination as the petitioner has failed to set out the particulars of that feeding in his election petition (*Vide* page 288). We entirely agree with this line of reasoning. The aforesaid statements of R.W. 2 are self-contradictory and hence his evidence is rejected.

34. Sri K. P. Muddappa argues that the then Chief Minister and the then Ministers for Finance, Law and Home had visited several places in Mandya Parliamentary Constituency and made speeches, bringing to bear undue influence on the entire electorate. Sri D. N. Narasinga Rao, counsel for the respondent argues that, as leaders of the Congress Party, they made speeches, explaining the aims and policy of the party to the electorate and never fettered their discretion in the matter of choice of the candidate. As leaders of the party, they had every right to declare to the public its public policy, without any intention to interfere with their electoral right and such actions on their part come within the ambit of proviso (b) to Clause (2) of Section 123 of the Representation of the People Act, 1951 as, under that proviso, *inter alia* a declaration of public policy without intent to interfere with any electoral right does not amount to any undue influence. In order to style undue influence as general, it should be so general as to lead the Election Court to a finding that it permeated the whole Constituency and thus there was no free and fair election (*Vide* Lichfield, 1 O'M & H 26). It has often been said that the law cannot strike at the root of due influence and under the law of election, only undue influence is forbidden. The leaders of a party will be deemed to exercise their due influence if they ask the electorate to vote for their party candidate, even if they happen to be Ministers. The learned counsel for the respondent have invited our reference to a direct case on the point [Bengal Legislative Council (Case No. 3) Rai Bahadur Surendra Narayan Sinha Vs. Babu Amulyadhane Roy and others reported in Doabia's Indian Election Cases Volume II at Page 368]. That case arose out of an election of nine members to the Bengal Legislative Council by the Members of the Bengal Legislative Assembly. The then Chief Minister of Bengal, Mr. A. K. Fazlul Haq, who was also the leader of the Assembly Coalition party has issued a mandate, in the Assembly under his signature only as leader, on the date of election, that the members have to

cast their preference for the candidates in the order named therein. It has been held by the learned Election Commissioners that he was entitled to use his influence as leader of his party in that manner and he cannot be divested of that right simply because he was Chief Minister at the time. This is a case of due influence on the part of a leader of a party.

35. Petitioner has sought to prove that the then Chief Minister to the Government of Mysore, Sri K. Chengalaraya Reddy had visited some places, that is Kanakapura, formerly known as Kanakanahalli, Maddur, Sathanur and Chennapatna and delivered speeches on election. At Kanakapur, he is said to have delivered a speech the purport of which has been alleged to have been reproduced by the Secretary of Kanakanahalli Taluk Congress Committee in hand bills similar to Exhibit H(1) P.W. 16 Sri H. Linga Gowda, a candidate for the Assembly from Kanakapura Constituency, refers to all this and adds that, as soon as his party members were returned, he assured the gathering that the control over food grains would be removed. P.W. 17 Sri B. L. Chenna Gowda, a candidate for Assembly from Vitupakshapura Constituency, makes it appear that, on 15th January 1952, the very day on which the then Chief Minister addressed a gathering at Kanakanahalli, he addressed a gathering of about 1,000 persons at Sathanur, reminding them that he was addressing them in the capacity of Chief Minister, assuring them that the control over food grains would be relaxed, promising to have the price of silk cocoons raised to Rs. 1-9-0 per pound and warning the people that, if they did not vote for the Congress Candidates, they would get into trouble, and wide circulation of pamphlets similar to Exhibit H(1) was also made there. At Maddur, he is purported to have addressed a gathering of 1,000 or 1,500 persons, impressing on the audience that the Mysore Sugar Factory would purchase non-*oppie* canes at rates favourable to the cane-grower (*Vide* the evidence of P.W. 9 H. B. Chowde Gowda). The meeting must have been on 25th December 1951 under the presidency of R.W. 21 as specified in the notice of the meeting issued by the Mandya District Congress Propaganda Committee, Exhibit C. There cannot be any truth in the statement of P.W. 17 that the then Chief Minister came to Sathanur in Government-owned car with a national flag flying over it as R.W. 23 is positive on the point that the then Chief Minister instructed the then Ministers not to use any Government cars for election propaganda. When he had instructed them so, it is not at all probable that he had made use of Government car himself while going out on election work (*Vide* also the evidence of R.W. 14 Sri C. Abdul Karim) that he came in private car on such work to Chennapatna. The very fact that he did not want Government cars to be used by Ministers while going out on such work also belies the statement of P.W. 17 that he reminded them that he was speaking to them in the capacity of Chief Minister as the said instructions would lead to the inference that he wanted the Ministers to address the people in their private capacity and he too must have done so. In Exhibit H(1) stress has been laid on the following points:

- (1) that, on account of drought in Kanakapur Taluk the Deputy Commissioner has been instructed not to procure food grains in the Taluk and movement of one or two pallas of food grains for personal use is allowed except that the sale of food grains is prohibited.
- (2) that there will be an increase in the number of food depots with more supply of food grains,
- (3) that tanks, wells, channels and roads will be opened, thus providing wages for the poor,
- (4) that cattle will be supplied with more fodder when there is scarcity for it,
- (5) that three lakhs of rupees has been set apart for the benefit of those who have no means in the country,

and (6) that it had been arranged with the Central Government through the Tariff Board, to raise the price of silk cocoons to not less than Rs. 1-9-0 per pound,

the Government of Mysore not being responsible for the fall in the price. All these amount to a declaration of public policy or public promise at the most, as we shall presently show. In the course of Exhibit H(1) the propaganda of K. M. P. Party that they would lift the control when returned and that the Government had spent all the reserve fund has been styled as false, and the K. M. P. Party has been likened to *kudike* marriage and a water bubble which would burst after the election. At the foot of Exhibit H(1) there is the note that it has been printed at P. M. M. Kanakanahalli, published by Secretary T. C. C. Kanakanahalli. The petitioner has relied on this exhibit to show that the then Chief Minister by his speech at Kanakapura exercised undue influence on the electorate by making some promises and decrying the K. M. P. Party, resulting

in the defeat of the petitioner, K. M. P. Party candidate. When he has relied on it as one of the main planks in his case, he should have taken care to cite and examine the printer and the publisher to prove its contents. He has failed to do so but, when the Case for the respondent had progressed far, he filed Interim Application No. VI under Section 151 of the Code of Civil Procedure, for issue of summons to one Sri B. C. Channiah Manager, Praguthi Mudranalaya, Kanakanahalli, to produce the following:—

- (1) Order book of the Press, showing the booking of orders during the months of November and December 1951 and January 1952.

and (2) Proof strike order files for those months to enable him to prove that the agents of the respondent have placed an order with that Press to print pamphlets similar to Exhibit H(1). The reason given in his affidavit in support of the application is that the respondent's witnesses have pleaded want of knowledge of issue of these pamphlets. The respondent has raised the objection that it is not maintainable, as a case not set out in the election petition, is sought to be made out by summoning the witness, at a late stage. The onus lay heavily on the petitioner to prove his case to the hilt and he cannot be allowed to re-open his case after the respondent's case had sufficiently progressed, on a very flimsy ground. Hence Interlocutory Application No. VI is dismissed.

36. Even assuming that the then Chief Minister has made his speech as summarised in Exhibit H(1) the first portion of his speech that some benefits had been bestowed on the population of Kanakanahalli or Kanakapura Taluk and others would follow at best amounts to a declaration of public policy and public promise, without fettering the discretion of the electorate to make their choice of the candidate and such a declaration does not amount to undue influence under proviso (b) of Clause (2) of Election 123 of the Representation of the People Act, 1951. Sri D. N. Narasinga Rao argues that, even assuming that the then Chief Minister has compared the K.M.P. Party to a *Kudike* marriage and to a transitory water bubble, it does not amount to an attack of the personal character or conduct of the K. M. P. Party candidate—the petitioner. Under Clause 5 of Section 123 of the Act, the publication of a false statement of fact relating to the personal character or conduct of a candidate by any other candidate or his agent or any other person with the connivance of the candidate or his agent, to prejudice his election is a major corrupt practice. In Cumberland (Cockermouth Division) case (1901) 5 O'M & H 155, the following observation of Darling J has a direct bearing on the point:—

"What the Act forbids is this. You must not make or publish any false statement of fact in relation to the personal character or conduct of a candidate; if you do, it is an illegal practice. It is not an offence to say something which may be severe about another person nor which may be unjustifiable nor which may be derogatory unless it amounts to a false statement of fact in relation to the personal character or conduct of such candidate; there is a great distinction to be drawn between a false statement of fact which affects the personal character or conduct of a candidate and a false statement of fact which deals with the political position or reputation or action of the candidate."

The latter part of the observation is suggestive that a candidate may go even to the length of attacking his rival candidate's political position even by false statement of fact. When that is so, the leader of a party can attack the political position or reputation of another party which had adopted its own candidates for election. The petitioner ought to have proved the use of the words '*kudike* marriage' in relation to his party, by the then Chief Minister by examining the printer and publisher of the original of Exhibit H(1) and showing that it represented the true purport of his speech.

37. The then Chief Minister is mentioned to have addressed a meeting at the Town Hall at Chennapatna that the Congress Ministry would grant the public all facilities if they voted for the Congress Candidates. Even this allegation is untrue as we shall presently show.

38. R.W. 20 Sri K. G. Thimme Gowda succeeded in election to the Legislative Assembly from Kanakapur Constituency, defeating K.M.P. Party nominee. He denies that the then Chief Minister told the people at Kanakapur that the control would be removed and the purchase-rate of silk cocoons would be enhanced and adds that his speech was to the effect that the Congress Party was organised and had rendered some public service and thus exhorted the people to vote for the Congress

Candidates. That the Chief Minister must have made a speech in this manner gains support from the statement of R.W. 14 Sri C. Abdul Kharim, President of Chennapatna Municipality that he appealed to the masses at Chennapatna to vote for the Congress Candidates, without promising to help them in some way or other if they did so. R.W. 19 Sri K. V. Shankare Gowda was elected to the Assembly from Mandya Constituency on the Congress ticket and he has pointedly mentioned that the Chief Minister in his speech at Mandya in December 1951 outlined the policies of the Congress Organisation and asked the people to vote for the Congress Candidates as that Organisation would work in the interest of the welfare of the public, having come to the place in a congress car. These are persons, holding some good position in life and hence their evidence is worthy of credit. From this witness's evidence particularly, it could be safely inferred that the then Chief Minister, in the course of his election tour, was laying emphasis on the policy of the Congress Organisation and its determination to serve the country.

39. As regards the then Minister for Home, R.W. 23 Sri T. Mariyappa, the petitioner has tried to prove that he has toured some villages in the Constituency on election work, canvassing for the respondent and other Congress Candidates and that he held out some promises to the people whom he addressed at different places that some amenities would be provided for them in their villages if they voted for them. The witness for petitioner that first speaks to his visit on alleged election work is P.W. 6 Sri K. N. Simha of Srirangapatam. He makes it appear that R.W. 23 visited Srirangapatam on 27th December 1951 and promised to the public there that Government would render financial aid to its Municipality as it was deteriorating, if they voted for the respondent, the congress nominee. R.W. 12 Dr. C. Bandi Gowda is also a resident of Srirangapatam. He started by saying that R.W. 23 came to Srirangapatam for purpose of election but later he has mentioned that he invited him and Sri Chenniah to make speeches at Ganjam, and they came and did so. R.W. 23 is positive that, at Ganjam, he opened Rama-mandiram and made a speech there. To a further question in cross-examination, he has given out that he did not make any objectionable speech there. Hence no speech was made by him at Srirangapatam but at Ganjam. P.W. 6 ceased to be a *Mukthiyar* since $1\frac{1}{2}$ or two years as he is not able to see and hear properly. Considering his status in life, no reliance can be placed on his evidence that R.W. 23 visited Srirangapatam and made a speech there as detailed by him. According to P.W. 9, in the meeting at Bekkaralu, R.W. 23, Sri Veeranna Gowda and R.W. 21 participated and R.W. 23 brought with him the Superintending Engineer, Executive Engineer and Assistant Engineer to that village and he made a speech that lands in about thirty villages could be irrigated if canal water be diverted to them by constructing an anicut at an important point and at the direction of himself and R.W. 21 the Engineers took measurements from Bommenahalli half a mile from that village. About R.W. 21, reference has already been made to his election propaganda in several places. P.W. 9 does not say that what all he had stated had been done with the purpose of canvassing votes of the inhabitants of those parts for the Congress nominee, the respondent. He does not say over which river the anicut was sought to be put up. According to P.W. 10, notice of the date of this meeting and other meetings, Exhibit D, was issued. It is by Maddur Taluk Congress Propaganda Committee. It is found in it that, on 10th December 1951, R.W. 21 and others would pay visits to Bekkalale and other villages and make speeches. This witness's version is that R.W. 23 asked the Superintending Engineer in the presence of several people at the Shimsha River close to Bekkalale, that anicut might be constructed over it so that the lands in Jakkenahalli and other villages might be irrigated by its water, he also having asked them to survey the locality. P.W. 11 corroborates the previous witness and adds that, after returning to the village from the river, R.W. 23 asked them to vote for the respondent, the congress nominee, thus suggesting that all the measurements were got made with a view to infuse in the minds of the people that they would be deriving a large benefit if they supported respondent, the Congress Candidate. We have gone through the cross-examination of R.W. 21 and found only his admission of his having attended the meetings mentioned in Exhibit D. In fact, Exhibit D shows that several meetings including the one at Bekkarale had been arranged. His attention was not drawn to details of the meeting in question at Bekkarale spoken to by some of the witnesses for the petitioner. The witnesses for the petitioner have taken advantage of the fact that there was a meeting at Bekkarale on 10th December 1951 as per Exhibit D and twisted facts about it. R.W. 15 Sri M. Manche Gowda is a native of Ankannathapura where P.W. 11 also resides and it is alleged by P.W. 11 that it was at the instance of R.W. 15 that he attended the meeting. The question of construction of an anicut over the Shimsha River near Bekkarale was pending sanction of Government for 15 years and people of 12 villages were constantly filing petitions before Government for sanctioning the construction of the anicut till

1948 and R.W. 15 set his hand to the task of petitioning the Authorities on their behalf since 1948 and it was he that fixed up the date with R.W. 23 for the spot inspection and accordingly he visited the place in September or October 1951 accompanied by the Superintending Engineer and others (*Vide* evidence of R.W. 15). R.W. 23 is sure that he did not visit Bekkarale for purpose of election but he visited it long before the election in September or early part of October 1951 at the request of some persons to inspect the spot for putting up an anicut over the Shimsha River and he did inspect the spot, the Superintending Engineer having accompanied him and he never talked to the people that were present there on election. Hence a purely official visit by him had been turned into one for purpose of election propaganda by the aforesaid witnesses for the petitioner. The anicut is now under construction between Bekkarale and Hirangur (*Vide* evidence of R.W. 15.)

40. P.W. 10 has referred to the alleged presence of the then Ministers, Sri H. C. Dasappa and R.W. 23, at a meeting at Hebbaralu. P.W. 9 speaks to the alleged presence there of only Sri H. C. Dasappa along with others of the Congress Party including R.W. 21 and Sri Veeranna Gowda. P.W. 9 has said that Sri H. C. Dasappa also made a similar speech as R.W. 21. P.W. 9 has not said a word as to why these promises as alleged by him, were made by Sri H. C. Dasappa. P.W. 10 on the other hand had stated that both Sri H. C. Dasappa and R.W. 23 had first asked them to vote for the respondent and then promised to give them these benefits. P.W. 11 corroborates P.W. 9 adding that Sri H. C. Dasappa and R.W. 21 promised to see that the Mysore Sugar Factory purchased non-*oppige* sugar canes at Rs. 47-10-0 per ton. We did not find the witness giving out the object with which such speeches as alleged were made. R.W. 23 denies that he went to Hebbaralu on election tour. There is the evidence of R.W. 21 that he did not visit Hebbaralu along with Sri H. C. Dasappa. Hence R.W. 23 did not at all go there for election propaganda but yet P.W. 10 has made bold to say that he also addressed a gathering there. It is incredible that persons of good social standing would go to the length of promising to people that they would confer benefits on them by improving their villages if they voted for the Congress Candidates.

41. We have already referred to the presence of R.W. 21 at the meeting at Maraliga. P.W. 10 speaks to this meeting in which Sri T. Mariyappa R.W. 23 and Sri Channiah are also stated by him to have taken part. It is curious that this witness does not give the purport of their speeches there. Exhibits E is the notice circulated among the public by Maddur Taluk Congress Propaganda Committee, intimating that, on 7th January 1952, R.W. 23 and Sri Channiah would make speeches on election at Maraliga. R.W. 21 admits that he was present at that meeting but he does not say whether he made a speech there. The purport of the speech of Sri A. C. Bandi Gowda R.W. 21 as given by P.W. 10 at that meeting is quite different from that given by P.W. 11 inasmuch as P.W. 10 also refers to an alleged promise of getting roads and schools opened in those parts by him besides making the Factory purchase non-*oppige* canes from them. P.W. 11 further asserts that R.W. 23 also made a similar speech as R.W. 21. We have already set out the evidence of P.W. 14 in relation to R.W. 21. So far as R.W. 23 is concerned, his (P.W. 14's) testimony is to the effect that he also made a similar speech as R.W. 21 in his village Koodalukuppe, adding that the Ministry was Congress Ministry and he could help them by having the roads of their village repaired if they voted for the respondent. P.W. 15's evidence as to R.W. 21, participating at the meeting in his village, Kodihalli, has already been called out. The witness also attributes to Sri V. Venkatappa, the then Speaker of the Legislative Council, as having made a similar speech at that meeting as R.W. 21. P.W. 16 Sri M. Linde Gowda asserts that at a meeting at Kanakapura, Sri V. Venkatappa also participated along with R.W. 21 and asked them to vote for the Congress Candidates having assured them that, as soon as the Congress Candidates were returned, they would see that the control over food stuffs would be removed. Our observation at the end of last paragraph holds good here also.

42. The proposed putting up of an anicut over the Lokavavani river near Bolenahalli was engaging the attention of the Government since some years and according to P.W. 22, Kale Gowda *alias* Dodda Thammie Gowda, some days before the election, Sri T. Mariyappa R.W. 23, respondent R.W. 22, the Superintending Engineer and others came to that spot and foundation stone for the anicut was put up by R.W. 23 there and not only he but also R.W. 22 made speeches that the Ministry was Congress Ministry and asked them to vote for the latter and they would be granted all facilities. Some of the other witnesses for petitioner also refer to the alleged presence of R.W. 22 along with other congress leaders

at other places. Respondent (R.W. 22) denies having gone with any one for propaganda work and R.W. 23 has made it clear that R.W. 22 did not come with him on election work as mainly at the request of the Assembly candidates. He turned out such work at some places in the Taluks of Pandavapura, Maddur and Malavalli. P.W. 22 has not come out with the truth as to when R.W. 23 visited the place. He has also exaggerated as to what was done by him at that spot. It was only at the end of September or beginning of October 1951 that R.W. 23 participated in the performance of *Gudli Pooja* at that spot, arranged by the Engineers. He never spoke a word about the election there then, he having started on his election tour only in the early part of January 1952 after the Mysore City elections were over, he having stood as a candidate to the Legislative Assembly from North Mysore Constituency (*Vide* R.W. 23's evidence.)

43. In Chennapatna Taluk, Sri K. T. Bhasyam, the then Minister for Law and R.W. 21 are mentioned to have said to the people at meetings at Mallurpatna, Mayanayakanahalli and Mathikere that they would get electric lights for their villages, if they voted for the Congress Candidates and Sri H. C. Dasappa is mentioned to have promised the public at Mathikere and other villages that he would get them loans from Government as well as Singer Sewing Machines on hire-purchase system, that Byrapatna would be made a smithy centre and that the Government would render all financial help to cottage industries in villages, they supported Congress Candidates with their votes Sri V. Venkatappa, Sri H. C. Dasappa and R.W. 21 are said to have threatened the scavengers of Chennapatna at their Colony that their ration cards would be withdrawn if they did not vote for the Congress Candidates (*Vide* the evidence of P.W. 23 Anku Gowda). P.W. 23 was canvassing for Sri Puttaramiah who was opposing Sri V. Venkatappa who stood as a candidate for election to the Assembly from Chennapatna Constituency on congress ticket. To our mind, this witness has largely drawn on his imagination while adverting to the election work of the then Ministers R.W. 21 and Sri V. Venkatappa and distorted facts with some dire object. Pitched as he was in working against the Congress Candidate for the Assembly who was returned, he showed undue anxiety to support the petitioner even by volunteering that R.W. 23 came to Siddenahalli and promised to have a tank opened at a spot he showed to villagers there if they voted for the Congress Candidates. R.W. 23 never went to Siddenahalli for election (*Vide* his evidence). F.W. 25 (Sri K. Thammanne Gowda) attributes to Sri H. K. Veeranna Gowda as having made a similar speech as Sri A. G. Bandi Gowda R.W. 21, at Sagala.

44 According to P.W. 29 Sri M. B. Chamiah, at Pandavapura R.W. 23 addressed a meeting that the Congress Ministry would render some service in future as in the past, having attacked the petitioner personally that he had lost all his influence having become old, at Sunkathanur, he addressed a gathering that the construction of an anicut at Bolenahalli would be dropped if they did not vote for the respondent and at Melkote, he promised the audience that he would get the weavers there and in neighbouring villages sufficient supply of yarn, he being the Minister for Supply also. P.W. 29 stood for Assembly election from Pandavapura Constituency on K.M.P. Party ticket and it is thus no wonder that we find him attacking the election propaganda of R.W. 23 on behalf of his rival candidate who was returned. R.W. 23 was not holding out promises or threats to the electorate in the course of his election work but was explaining to them the policy of the Congress Organisation and asking them to vote for the Congress Candidates if they agreed with it (*Vide* R.W. 23's evidence). When that was so, P.W. 29 has gone on improving his versions as to what transpired from meeting to meeting which R.W. 23 addressed.

45. At Agasanapura, Sri H. K. Veeranna Gowda and Sri K. V. Shankare Gowda R.W. 19 are said to have made speeches similar to the one made by R.W. 21 there. At Chikkarasanakere also, Sri H. K. Veedanna Gowda and Sri Shankare Gowda are said to have made speeches similar to the one made by R.W. 21 (*Vide* evidence of P.W. 33 Kari Gowda). At Bevrur Mandya and Magawada, Sri K. T. Bhasyam, the then Minister and Sri V. Venkatappa are alleged to have made speeches similar to the one made by R.W. 21 there and subsequently Sri Channiah is said to have addressed meetings at those places in similar terms (*Vide* evidence of P.W. 34 T. Venkataiah). This witness was a polling agent at one of the polling booths for Sri Puttaramiah who was opposing Sri V. Venkatappa at the Assembly election. Hence he is also interested in supporting the petitioner in this case as against the Congress nominee, the respondent. According to Veerappa P.W. 36, at Bandur, just three days before the election R.W. 23 Sri Channiah and others addressed a meeting, asking people to vote for the Congress Candidate and threatening them that, if they did not do so, they would all

get into trouble, that being their final say in the matter. R.Ws 9 and 10 (R. T. Lakshmana Rao and Ere Gowda) say that Sri T. Mariyappa (R.W. 23) and Sri Channiah asked the people at Pandavapura to vote for the Congress Candidate, the reason given by the former being that the Congress Organisation had worked hard for the country and it was a good one. R.W. 14 Sri C. Abdul Khareem's evidence is that Sri K. Chengalaraya Reddy, Sri K. T. Bhasyam, Sri H. K. Veeranna Gowda and others came to Chennapatna in connection with election on different occasions and appealed to the masses to vote for the Congress Candidate without assuring that they would render some help if they did so and without threatening that, if they did not vote for the Congress Candidates, they would get into trouble. There is nothing on record to discredit the testimony of this witness. There is also the evidence of R.W. 17 that Sri T. Mariyappa (R.W. 23) and Sri Channiah came to his village, Maraliga to canvass votes for the Congress Candidates and they asked the people to support them as the Congress Organisation was a good one from the beginning.

46. The respondent has placed on record the evidence of R.W. 19 Sri K. V. Shankare Gowda that he used to explain the policy of the Congress Organisation to the people and left the choice of the candidate to their discretion. He was appointed as Chairman for the Mandya District Development Committee for a period of two years by Government Order dated 18th February 1949, original of Exhibit NN but his office was continued up to the end of March 1952. He is also a member of the Sugar Cane Cess Committee. The amount that was at the disposal of the Rural Development Committee of the District was a lakh odd rupees every year. Because the Committee had to spend this amount on Rural Development every year, it does not mean that the witness as Chairman of the Rural Development Committee of the District had a hold on the electorate. He is a witness of good social standing and his evidence is worthy of credit.

47. As remarked by us before, it is not at all probable that the then Ministers, Sri H. C. Dasappa, and Sri K. T. Bhasyam, Sri T. Mariyappa and other leading members of the Congress party would have held out promises to the public as aforesaid. Enough evidence has been led by the respondent to show that the leaders of the Congress Party and some leading members of the party were simply explaining to the people the Congress policy and its readiness to serve the country in future as in the past.

48. The evidence led by the petitioner that the public in several villages intended to vote for him but they were obliged to change their mind because of an alleged undue influence from the Congress Party is too artificial to be believed. Most of the witnesses for the petitioner are interested. P.W. 2's wife and P.W. 3's step-mother are sisters. P.W. 9's wife is the daughter of Kenche Gowda and Kenche Gowda is the elder brother of Sri Malliah, friend of the petitioner. P.W. 13 had been to Pandavapura to canvass for Sri Shame Gowda, evidently P.W. 29, Sri Channiah who opposed the Congress Candidate for the Assembly election from Pandavapura Constituency, on K.M.P. Party ticket. P.W. 16 Sri M. Linga Gowda was a candidate for election to the Legislative Assembly on K.M.P. Party ticket, from Kanakanahalli Constituency and he was defeated by the Congress Candidate R.W. 19 Sri Thimma Gowda. He admits having worked with the petitioner against the Congress Candidate. P.W. 17 Sri B. L. Channe Gowda stood as a candidate for Assembly election from Virupakshapura Constituency on K.M.P. Party ticket and he was defeated.

49. For the foregoing reasons, our finding on the 5th issue is in the negative and that on the alternate 5th issue is in the affirmative.

50. For the aforesaid reasons, our finding on issue No 8(a) is in the negative and that on alternate 8th issue is in affirmative.

51. There is absolutely no evidence that Sri T. V. Rudrappa Legal Adviser of the Mysore Sugar Company, canvassed for any Congress Candidate. We have already discussed the evidence led by the petitioner against Sri H. K. Veeranna Gowda and Sri K. V. Shankare Gowda and disbelieved it. Hence our finding on the 9th issue is in the negative and that on the alternate 9th issue is in the affirmative, so far as Sri H. K. Veeranna Gowda and Sri K. V. Shankare Gowda are concerned.

52. The petitioner P.W. 38 has sworn that he filed his return of election expenses. The date of its submission is given in the election petition itself. The respondent has not challenged the correctness of the return with reference to any specific item in it, nor has he challenged it in his evidence as R.W. 22. Hence it must be held that the petitioner's return of election expenses is correct and was submitted in time. This is our finding on the third issue.

53. Shri K. P. Muddappa contends that the respondent has not kept proper and valid accounts of his election expenses and he has exceeded the maximum limit of expenses prescribed by the rules under the Act for election to the House of the People, from Mandya Parliamentary Constituency which is a single member Constituency. Under Schedule V of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, the maximum limit of election expenses such a candidate can incur is fixed at Rs. 25,000 so far as Mysore is concerned. Under Section 44 of the Representation of the People Act, 1951, every election agent shall, for the purpose of each election for which he is appointed as such, keep regular books of account, entering therein such particulars of expenditure in connection with the election as prescribed. What particulars should find a place in his book of accounts are specified in Rule III of the said rules. Under Section 76(1) of the Act, a return of election expenses of the candidate who has been nominated, signed by him and his election agent, shall be filed with the Returning Officer, with particulars and in the form mentioned in Rule 112(2) of the rules within the time prescribed, after each election. In this case, the respondent has appointed himself as his election agent and he has submitted the return of election expenses, Exhibit PP, under his signatures as candidate and election agent, showing that he had incurred an expenditure of Rs. 4239-1-0 as election expenses. It is far below the maximum limit prescribed. When he was in the witness-box as R.W. 22, he was cross-examined by the counsel for the petitioner in respect of some specific items in Exhibit PP and thereafter an objection was taken by the respondent's counsel that, in the election petition itself, no objection was taken to items in the return specifically. The matter was argued and a ruling was given that the petitioner should have taken exception to specific items in the return, as urged. While arguing the main case, Sri K. P. Muddappa contends that the respondent has not kept proper and valid accounts as required under the said rules. Sri D. N. Narasin Rao contends that, as items of expenditure were few, the respondent had noted them on sheets of paper regularly and compiled his return. The petitioner's counsel has not cross-examined the respondent, R.W. 22, as to the form in which he has maintained his accounts. The respondent's counsel has been frank enough to concede that he had noted the items of expenditure on sheets of paper regularly. There is no doubt a non-compliance with the said rule III but is not a serious one, as there were not several items of expenses. The non-compliance with the said rule has not been shown by the petitioner to have materially affected the result of the election.

54. Sri K. P. Muddappa argues that the respondent must be deemed to have been a prospective candidate when he filed an application before the Congress Organisation for selection as a Congress Candidate for election to House of the People from Mandya Parliamentary Constituency. Such applications were called for by the Congress Organisation in the first week of September 1951 and he deposited with it Rs. 250 as application fee and Rs. 1,500 for propaganda work by the Congress Organisation on his behalf. Sri K. P. Muddappa has cited a case reported in Gazette of India Extraordinary Part II Section (3) dated 26th March 1953, decided by the Election Tribunal, Vellore, *Muniswami Gounder Vs S. Khader Sheriff and others*. The first respondent who was returned to the State Legislative Assembly, Madras filed his application for election as Congress Candidate before Tamil Nad Congress Committee, with an application fee of Rs. 500 and later deposited a sum of Rs. 500 with the North Arcot District Congress Committee. That application was granted. The latter sum, the Election Tribunal found, was utilised by the latter Committee towards propaganda work on behalf of the Congress Candidates for the Assembly. They also found that he became a prospective candidate when he filed his application with a declaration for being chosen as Congress Candidate and the said sums ought to have been noted as election expenses in his return. The term 'candidate' has been defined at Section 79(b) of the Representation of the People Act, 1951 thus:—

'Candidate' means a person who has been or claims to have been duly nominated as a candidate at any election, and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate.

The latter part of the definition relates to prospective candidature.

55. In Rochester Case 4 O'M & H Page 159, Lord M'Laren has clearly defined, if we may say so with respect, as to the point of time when prospective candidature commences. His Lordship has observed thus:—

"If, for example, a candidate, not proceeding upon any public and patent facts, but trusting to his own political sagacity, and looking round

the political horizon thinks that an election is imminent, and proceeds to institute what is called a canvass of the constituency, which he continues without intermission down to the election, it may very well be that, in such a case, his own judgment as to when it is necessary to attend to his electoral interests shall be taken as fixing the commencement of that particular election."

Hence, unless an intending candidate institutes a canvass of the Constituency thinking that the election is imminent, and continues such canvass of constituency without a break till the date of election, he cannot be styled as prospective candidate. In the present case, the respondent did not come before the Constituency and canvass it till he filed his nomination paper either on the 21st or 22nd November 1951 (*Vide* his evidence as R.W. 22). Hence the said sums of Rs. 250 and Rs. 1,500, he deposited with the Secretary of the Mysore Prachar Congress Committee, on 3rd September 1951 (*Vide* Exhibit PP) cannot come under the category of election expenses as he did not become a prospective candidate on that date. the commencement of prospective candidature having a direct bearing on the commencement of election expenses. Hence with due respect, we do not agree with the said view expressed by the Election Tribunal, Vellore. The said sums of Rs. 250 and Rs. 1,500 need not have been shown by the respondent as election expenses in Exhibit PP, he having gone about his election campaign only from the date of filing of his nomination paper. Sri K. P. Muddappa did not give out the object with which he pressed his contention about prospective candidature.

56. For the foregoing reasons our finding on issue No. 4 is that the respondent as his own election agent, has not maintained accounts showing his election expenses, as required by Rule 111 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 but his non-compliance with this provision has not materially affected the result of the election and he has not exceeded the maximum limit of expenses prescribed for election to the House of the People from Mandya Parliamentary Constituency.

57. There is only one witness by name Dodda Putte Gowda (P.W. 32) Agasanapura that has mentioned that R.W. 21, Sri Veeranna Gowda, R.W. 22 and R.W. 19 deputed agents to bring the villagers in two lorries of the Mysore Sugar Factory for a meeting at Chikkarasanakere and thus about 2000 people were brought there. If this witness's evidence is to be believed, then the lorries must have made innumerable trips. P.W. 39, the General Manager of the Factory has given out the total consumption of petrol for these Factory vehicles for November 1951, December 1951 and January 1952 as 2030, 2740, and 2857 gallons respectively. The reason for the disparity in these figures is given by him as increase in transport as well as trips made by the vehicles as between Mandya and Bangalore for Factory purposes. P.W. 39, the General Manager of the Mysore Sugar Factory, is in charge of all the Factory vehicles and he denies that he sent any of them in connection with the election propaganda. He is a responsible Officer of the Factory and there is nothing on record to discredit his testimony. We have already held that R.W. 21 was not using the Factory car for election purpose. Hence our finding on issue No. 8(b) is in the negative.

58. The systematic appeal to voters to vote or refrain from voting by use of a National flag is a minor corrupt practice under Clause (5) of Section 124 of the Representation of the People Act, 1951. The petitioner has led no evidence to prove that the respondent or his general agent, R.W. 21, has used National flag, for canvassing and securing votes for him. The allegation respecting this corrupt practice, was made by the petitioner in the course of his reply and not in the election petition itself, as it ought to have been done. It is thus belated and not tenable. It has not been proved either. We find the 12th issue accordingly.

59. The respondent (R.W. 22) admits that he was a dealer in cloths under license issued by the Government of Mysore at the end of the year 1948. He was rather a wholesale dealer. He was thus a holder of office of profit under the Government of the State under Article 102(1)(a) of the Constitution of India. By means of a letter dated 3rd November 1951, he had his license cancelled by the Controller of Civil Supplies in Mysore on 7th November 1951 as per original of Exhibit III, copy of the order made by the Controller. He filed his nomination paper on 21st or 22nd November 1951. Hence he ceased to be a holder of office of profit under the Government of the State some days prior to his nomination. The petitioner's plea in this regard, raised in his reply is belated and therefore not tenable. This is our finding on the 11th issue. On the alternate 11th issue, we find that the respondent had his wholesale cloth dealer's license cancelled a fortnight prior to his nomination.

60. P.W. 38 mentions that an employee of Mysore Sugar Company, a voter, was detected introducing 10 or 15 ballot papers into the respondent's ballot box at Boothana Hosur Polling Booth. He does not say that it was at the connivance of respondent or his agent. Boothana Hosur is in Mandya Taluk. On the report of the Presiding Officer of that booth, the Police Sub-Inspector, Mandya Rural, placed a charge sheet against the voter by name Deviah in the Second Magistrate's Court, Mandya for offence under Section 126(2)(b) of the Representation of the People Act, 1951, that, on 4th January 1952, he fraudulently attempted to put into the ballot box ballot papers other than the one issued to him at that booth (*Vide* Exhibit S, copy of the charge sheet). It was registered as Criminal Case No. 1052/51-52 and after trial the Magistrate acquitted the accused (*Vide* Exhibit I, copy of the Judgment). The Magistrate has opined that the case for prosecution has not been proved beyond reasonable doubt. Petitioner's evidence on the point is interested. He has not proved the incident alleged, in this case independently of the judicial proceedings. Hence our finding on the 10th issue is in the negative.

61. The respondent's counsel does not press for a finding on the second issue. The provision of law quoted also by the respondent in this connection is incorrect. Hence our finding on the second issue is in the negative.

62. Clause (1), Section 83 of the Representation of the People Act, 1951, enjoins that an election petition shall contain a concise statement of material facts on which the petitioner relies and signed and verified by him. It is Clause (2) of Section 83 that is very relevant for the purpose of deciding the first issue and under it, the petition shall be accompanied by a list of particulars of any corrupt or illegal practice on which he relies along with the name of the person that has committed the said practice and the date and place of commission thereof, duly signed and verified by him. In the present case, the election petition has not been accompanied by any such list. We would have deemed it a sufficient compliance with the provisions of this clause if all the particulars of alleged corrupt or illegal practices as required by it have been set out in the election petition itself. But the petitioner has not given in the election petition full particulars of almost all the corrupt or illegal practices relied on by him. As regards the alleged personation of dead voters at Gejjalagere polling booth, petitioner (P.W. 38) purports to have come to know from P.W. 20 and his brother Siddiah the next day after the date of election, that Puttaramiah introduced the personators to the Official, who issued the identification slips to voters at the booth and sent them to the booth for voting. As regards the meetings addressed at Kanakapura and Maddur by the then Chief Minister, he purports to have stood at some distance and heard his speeches and witnessed copies similar to Exhibit H having been distributed at the meeting at Kanakapura. He gives a list of places at which the then Chief Minister, some of the then Ministers and R.W. 21 addressed meetings and he professes to have learnt from some people as to what transpired in them soon after they were held. He ought to have explained while in the witness-box why he had not given details of corrupt or illegal practices alleged to have been committed at those meetings or at Gejjalagere polling booth in the form of a list as an annexure to the election petition. He has not chosen even to apply for amendment of particulars of such corrupt or illegal practices as set out in the election petition under Clause (3) of Section 83 of the Act. The provision of Clause (2) of Section 83 is rendered mandatory by use of the word 'shall' therein (*Vide* Election Petition No. 269/1952, Debi Prasad Vs. Sri Mohammad Naseer and 14 others—decided by the 'Election Tribunal', Gorakhpur—reported in the *Gazette of India Extraordinary*, Part II—Section 3, dated 20th January 1953). Under Clause (4) of Section 90 of the Act, the Tribunal may dismiss an election petition for non-compliance with the provisions of Section 83 of the Act. Hence the election petition is liable to be dismissed on account of the failure of the petitioner to comply with the mandatory provision in Clause 2 of Section 83. Hence our finding on the first issue is in the affirmative.

63. The respondent secured 1,26,000 votes and the petitioner 84,000 votes (*Vide* evidence of R.W. 22). Thus the respondent has come out successful with a vast majority of 42,000 votes over the petitioner. We are convinced that the election of the respondent to the House of the People from Mandya Parliamentary Constituency has been a fair and free one.

64. In the result, under the general issue, the election petition fails and we dismiss it with costs which is assessed at Rs. 500 (Five hundred). This sum includes respondent's pleader's fee which is fixed at Rs. 300 (Three hundred).

Dictated to the Stenographer and pronounced in open Court on the 11th day of May 1953.

(Sd.) V. KANDASWAMI PILLAI, *Chairman.*

(Sd.) K. N. PADMANABHIAH, *Member.*

(Sd.) MIR IQBAL HUSSAIN, *Member.*

The 11th May, 1953.

[No. 18/121/52-Elec.III/9317.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.